IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 546 of 1988
To
FIRST APPEAL No. 565 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BECHAR KALABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Defendant(s)

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Appearance :
MR PV HATHI for Appellant(s) : 1,
MR SATYAM CHHAYA, AGP for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/03/2007

ORAL JUDGMENT

1. The present appeals arise for enhancement of the compensation than the amount awarded by the Reference Court under the Land Acquisition Act in the Land Acquisition Cases No. 73 of 1982 to 82 of 1982.

2. Heard Mr. Hathi with Mr. Sheth, learned counsel for the appellants, and Mr.Chhaya, learned AGP for the State Government.

3. It may be recorded that against the very Judgment and Award of the Reference Court, First Appeal Nos. 362/86 to 381/86 were preferred by the State for reduction of the amount of compensation. However, vide order dated 17.03.1986, the Division Bench of this Court(Coram: B.K.Mehta & I.C.Bhatt, J.J., as they then were) has dismissed the appeals but at preliminary hearing ex-parte and the learned counsel appearing for both the sides are on agreement on the point that no proceedings were carried before the higher forum against the order of the Division Bench of dismissing the Appeals of the State.

4. Mr. Hathi, learned counsel appearing for the appellants made strenuous efforts to contend that the amount of compensation for Jirayat land and for Super Bagayat land, as fixed by the Reference Court, is less and in his submission, the Reference Court ought to have relied upon the highest amount of the sale instances, as

available on record and he submitted that if highest price as mentioned in the sale instances are considered, the appellants would be entitled to additional amount of Rs.15 per Are for Jirayat Land and additional amount of Rs.30 per Are for Bagayat land. He therefore submitted that this Court may order for enhancement of the compensation.

5. Whereas, Mr.Chhaya, learned AGP contended inter alia that on the aspects of compensation and fixing the price is concerned, such stands covered by the decision of the Division Bench in First Appeal Nos. 362/86 to 381/86. He therefore submitted that the appellants would not be entitled to any additional amount for Jirayat or Bagayat land and he further contended that a different view may not be taken by this Court than the earlier view taken by the Division Bench of this Court.

6. The examination of the said contention shows that in the order of the Division Bench of this Court dated 17.03.1986 in First Appeal No.362/86 and allied matters, the contentions on behalf of the State were considered on the aspects of the market value and the Division Bench of this Court, after considering the contentions of the State keeping in view the sale instances, the proximity of the area and the nearby village of the sale instances from the date of the

notification, found it proper to reject the contention of the State, including that on the aspects of compensation awarded for valuation of Wells.

7. Under these circumstances, I find that it would not be a case for taking a different view than the view taken by the Division Bench after considering the contention of the State, may be for reduction of the amount of compensation. Hence, the contention raised on behalf of the appellants by Mr.Hathi for higher amount of valuation or the market value of the land cannot be accepted.

8. Mr. Hathi, learned counsel appearing for the appellants raised the contention that in any case, the appellants would be entitled to 30% solatium and the interest on the amount fixed by the Land Acquisition Officer also and in support of his said contention, he relied upon the another decision dated 18/19.03.1998 of the Division Bench of this Court (Coram: Y.B.Bhatt & C.K. Buch, J.J.) in First Appeal Nos. 467 of 1986 to 511 of 1986 and he contended that for the Award of the same land acquisition cases but of the adjoining village, the aforesaid view was taken by the Division Bench. Therefore, he submitted that the appellants would be entitled to the additional amount of solatium on the value fixed by the Land Acquisition Officer as

well the additional amount of compensation fixed by the Reference Court.

9. Mr. Chhaya, learned AGP is not in a position to dispute the proposition for applicability of the view taken by the Division Bench of this Court in First Appeal No. 467/86 & others so far as the question of payment of solatium is concerned.

10. It may be recorded that in the decision of the Division Bench of the Court in in First Appeal No. 467/86, at para 15, while dealing with the said contention on the aspects of solatium inter alia observed as under:

> *"15. However, there is another contention raised by learned counsel for the appellant, which we must uphold. The Reference Court, after having determined the market value and while passing the consequential order as to solatium and interest has through oversight, error or inadvertence, directed the solatium to be paid to the claimants at the rate of 30% only on the enhanced amount. In this context, we must agree with learned counsel for the appellant that it is possible that this may be misconstrued in drawing up of the decree and in the computation of the total amount payable to the claimants, inasmuch as solatium is attributable not merely to the amount enhanced by the Reference Court under section 18, but it would be payable on the entire amount of compensation i.e. the amount payable under the award under section 11 as also the amount payable under section 18. No doubt, this apprehension of learned counsel for*

> *the appellant is justified, looking to the language used in the final order passed in the common judgment. Inasmuch as there is no controversy on the principle involved, and no objection has been raised by learned counsel for the respondent-State, we clarify, hold and direct that the solatium at the rate of 30% will be paid on the entire amount of compensation (which would include the amount of compensation under the award under section 11.) However, we may further clarify that by the word `compensation', we mean compensation attributable to the value of the lands paid on the basis of the prices determined by us, together with compensation in respect of other items such as palas, pipelines, wells etc."*

11. Similar view deserves to be taken in the present case on the very reasons as recorded by the Division Bench in the said decision.

12. Therefore, it is hereby held and directed that solatium at the rate of 30% will be paid on the entire amount of compensation (which would include the amount of compensation under the award under section 11). It is further clarified that by the word "compensation", the Court means the compensation attributable to the value of the land paid on the basis of the prices determined by the Reference Court, together with the compensation with respect of other items, if any, including the well etc.

13. Mr.Hathi, learned for the appellants lastly submitted that on the basis of the decision of

this Court in the above referred appeals, the appellants would be entitled for the additional amount of interest at the rate of 9% & 15%, as the case may be, on the amount of compensation as well as on the amount of solatium. Same is the situation as referred to hereinabove, on behalf of the State by the learned AGP that he is not in a position to dispute the proposition for applicability of the decision of the Division Bench of this Court. However, it further appears that the Division Bench when considered the matter, had negatived the claim of interest on the amount of solatium in view of the decision of the Apex Court as prevailing then in the case of ***Yadavrao P. Pathade Vs. State of Maharashtra, reported in JT 1996(2) SC 240***. However subsequently, the constitutional bench of the Apex Court in the case of Sundar Vs. Union of India reported at AIR 2001 SC 3516 has taken the view that the interest on the amount of solatium is also payable since the compensation includes the solatium and the amount awarded by the Land Acquisition Officer and at the time of award an additional amount awarded by the Reference Court shall also stand included.

14. It may be recorded that the Division Bench in its First Appeal No.467 of 1986 did observe at paras 16 & 17 as under:

> "16. A further contention raised by learned counsel

for the appellant also requires to be accepted in the context of the interest payable on the amount in question. Here also, we find that the Reference Court has in its final order directed payment of interest at the rate of 9% p.a. on "the enhanced amount". Obviously, this is an error which requires to be rectified. We accordingly hold and direct that the interest would be payable on the entire amount of the compensation and not merely on the amount enhanced by the award under section 18, and that such interest would be at the rate of 9% p.a. for the first year starting from the date of handing over possession, and at the rate of 15% p.a. for the period thereafter upto the date of payment or deposit in court.

17. It was further submitted by learned counsel for the appellant that the claimants are entitled to interest not merely on the market value of the lands, but are also entitled to interest on solatium. In support of his contention, learned counsel for the appellant relied upon a decision of the Supreme Court in the case of Naraiandas Jain v. Agra Nagar Mahapalika, reported in 1991 (4) SCC 212. No doubt, this plea raised on behalf of the appellant is supported by observation made in para 7 of the said decision. There cannot be any controversy that para 7 of the said decision does lay down that the solatium follows automatically the market value of the lands acquired, and that the spirit of the provision as to compensation includes the award and solatium, and that therefore, interest would also accrue on the solatium part of the award. However, in a subsequent decision of the Supreme Court in the case of Yadavrao P. Pathade v. State of Maharashtra, reported in JT 1996 (2) SC P. 240, a contrary view has been explicitly expressed and consequently, the prior view expressed by the Supreme Court in the case of Naraindas Jain (supra) is impliedly overruled. In fact, in the latter decision referred to hereinabove namely; Yadavrao P. Pathade v. State of Maharashtra, an earlier and contrary view taken in another Supreme Court decision namely, Periyar & Pareekalli Rubber Limited, reported in 1991 (1) SC 450, has been specifically considered and specifically overruled. In view of the decision in the case of Yadavrao P. Pathade (supra), learned counsel for the appellant was unable to sustain this contention any further."

15. However subsequently, in the above decision of the Apex Court in the case of Sundar (Supra), the constitutional bench of the Apex Court has taken a different view than the view taken by the Apex Court in its earlier decision in the

case of Yadavrao P. Pathade (supra), and ultimately, the Apex Court has laid down that the person entitled to the compensation awarded is also entitled to get the interest on the aggregate amount including solatium. No other decision of the Apex Court in this regard is brought to the notice of this Court by the advocate of either side, including the learned AGP. As present matters have remained pending and at the time they are finally heard, the law is changed, the benefit would be available to the present appellants.

16. Under the above, the only conclusion would be that the interest would be payable on the entire amount of compensation and solatium and not only on the mere amount enhanced by the Award of the Reference Court under Section 18 of the Land Acquisition Act and such interest would be @ 9% p.a. for the first year starting from the date of handing over of the possession and @ 15% for the period thereafter, upto the date of payment deposited in the Court. Hence ordered accordingly.

17. The appeals are partly allowed to the aforesaid extent. No order as to costs. Decree accordingly.

(JAYANT PATEL, J.)

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